

**STATEMENT
OF THE
INTERNATIONAL COUNCIL OF
SHOPPING CENTERS
ON
THE TAXATION OF ELECTRONIC COMMERCE
TO THE
U.S. SENATE COMMITTEE
ON
COMMERCE, SCIENCE AND TRANSPORTATION**

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**SUBMITTED BY:
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INTERNATIONAL COUNCIL OF SHOPPING CENTERS**

The International Council of Shopping Centers (ICSC) appreciates this opportunity to present its views

to the Senate Committee on Commerce, Science and Transportation on the need to apply existing state sales and use taxes to electronic commerce.

ICSC is the global trade association of the shopping center industry. Its 39,000 members in the United States, Canada and more than 70 other countries around the world include shopping center owners, developers, managers, investors, lenders, retailers and other professionals. The shopping center industry contributes significantly to the U.S. economy. In 1999, shopping centers in the U.S. generated over \$1.1 trillion in retail sales and over \$47 billion in state sales tax revenue, and employed over 10 million people.

Simply stated, ICSC believes that all goods, regardless if they are purchased over the Internet, via catalog or in traditional retail stores, should be subject to the same state and local tax collection requirements. One form of commerce should not receive preferential tax treatment over another. Unfortunately, existing tax law is structured to favor electronic commerce over sales made in local retail stores.

Contrary to popular belief, it is not the existing moratorium on Internet taxes that precludes states from requiring out-of-state retailers to collect sales and use taxes on their behalf. Instead, it is a 1992 Supreme Court case, *Quill v. North Dakota*, that held that remote merchants are not required to collect sales and use taxes for states in which they do not have substantial physical presence or “nexus”. The moratorium – which expires in October, 2001 – applies only to access charges and new, multiple and discriminatory state sales taxes. However, because many internet retailers are not collecting the existing sales and use taxes, a long-term extension of the moratorium will make this practice an accepted way to do business.

ICSC does not support the enactment or implementation of Internet access charges, or new, multiple or discriminatory taxes on electronic commerce. Instead, we believe that existing sales and use taxes should be collected uniformly on all types of retail sales. The taxes which states should be able to require remote sellers to collect are not new taxes. Instead, they are existing use taxes which buyers are currently obligated to remit to their state and local governments. However, as a practical matter, most individuals are either unaware of their tax obligations, or simply don’t bother to comply.

ICSC supports electronic commerce and believes it should be fostered. In fact, many traditional brick-and-mortar retailers are incorporating Internet commerce into their businesses in order to obtain new customers and better serve existing ones. However, as a matter of fairness and sound tax policy, Internet-based retailers should not receive a competitive advantage over traditional brick-and-mortar merchants simply because electronic commerce is a new and growing form of transacting business. Although the extent to which Internet sales will displace traditional retail sales is unknown at this time, the competitive tax advantage that Internet-based retailers currently have could negatively affect many local retailers, shopping centers and their communities in the near future. Not only would traditional retailers generate reduced sales, but their employees would suffer from reduced working hours, wages or layoffs.

In addition, state and local governments would receive less sales tax revenues that go to provide essential public services (i.e., education, police and fire protection, road repairs). Governments that rely heavily on sales tax revenues would either have to cut back on such services or increase other taxes on local businesses and residents, such as property and income taxes. If governments decide to increase sales tax rates to make up for lost revenues, lower-income individuals would have to pay an even higher disproportionate share of their income on sales taxes since they are less likely to own computers and purchase products on-line.

It is this reason why many state and local governmental organizations support a level playing field for all

types of retail sales. These government groups include the National Governors Association, Council of State Governments, National Conference of State Legislators, U.S. Conference of Mayors, National Association of Counties, National League of Cities and International City and County Management Association.

Our critics claim that electronic commerce is a new and growing industry and, therefore, it should not be saddled with “old world” sales tax collection requirements. They say we should not kill the goose that lays the golden egg. Our response is that, while electronic commerce is certainly a growing and important part of our economy, subjecting it to the same sales tax collection requirements that traditional merchants have been subject to for decades would not harm its growth or vitality. Electronic commerce will continue to flourish, regardless of whether or not sales and use taxes are imposed on it. These critics also claim that forcing Internet retailers to collect sales and use taxes for the thousands of state and local taxing jurisdictions across the country would be too burdensome on electronic commerce and just can not be done. We agree that all businesses, especially small businesses, should not be overburdened by sales tax collections and that state and local governments need to simplify their sales tax systems. However, inexpensive software exists today that assists retailers in determining how much state and local taxes needs to be collected on their sales.

Another argument that is made by our opponents is that states and localities are flush with cash and do not need to tax electronic commerce. While it is true that most state and local governments are currently enjoying budget surpluses, there is no guarantee that this economic prosperity will last indefinitely. (In fact, Kentucky and Tennessee are two states that are currently experiencing a deficit crisis. Their Governors strongly believe that the collection of this existing tax would be beneficial.) If and when our economy softens, many state and local governments, as well as traditional merchants, could suffer financial harm, especially if electronic commerce continues to displace traditional sales. ICSC is disappointed that the Advisory Commission on Electronic Commerce failed to reach agreement that all retailers should be on a level playing field with regard to state and local sales taxes. Even more so, we are disappointed at the process of the Commission itself. To begin with, even though a traditional local retailer was supposed to be represented on the Commission, no such individual was appointed.

Second, the Commission sent a report to Congress that was agreed to by only 10 out of 19 Commissioners, clearly short of the 13 votes that was required under the *Internet Tax Freedom Act*. Third and most importantly, the majority report fails to address the level playing field issue. Instead, it recommends (although not “formally”) that Congress extend the current moratorium, repeal the 3-percent telecommunications excise tax, establish special “nexus” carve-outs for Internet businesses, and create sales tax exemptions (such as those on “digitized” goods and their “non-digitized” counterparts) that would directly benefit the “business caucus” companies.

ICSC does not oppose the substance of the current moratorium (e.g. its ban against access charges and discriminatory taxes). However, we are deeply concerned that the longer the moratorium is extended, the more difficult it will be for Congress to address and take action to level the playing field among retailers.

The U.S. Supreme Court has recognized Congress’ authority to enact legislation that would allow state and local governments to require out-of-state retailers to collect sales and use taxes. Therefore, we urge Congress to enact legislation that would level the playing field among Internet-based and traditional retailers.

Thank you for this opportunity to express our views on this very important matter.